IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Second Appeal No.225 of 2007
With
Civil Application No.471 of 2007

Appa Habib Mulla — Appellant
Vs.
Sikandar Habib Mulla & ors. — Respondents

Mr.Prajakt Arjunwadkar for appellant.

CORAM: B.H.MARLAPALLE, J.

April 04, 2007.

P.C.

. Heard the learned counsel for the appellant - original defendant no.1. Regular Civil Suit No.160 of 1995 was filed by the present respondent no.1 the plaintiff who is the brother of defendant no.1 for recovery of the suit property. The plaintiff had claimed that he had purchased the suit property admeasuring 96 ft. from the residential premises bearing CTS No.2672 within the municipal limits of Ichalkaranji, Tal. Hatkanangale, Dist. Kolhapur for a consideration of Rs.10,000/- from Shri Vidyadhar Bhoje by registered sale deed dated 26/4/1988. However prior to the said registered sale deed Jinappa and Vidyadhar, the owners of the suit property had executed an agreement for sale on 10/11/1981 and on the basis of the said agreement he

had come in possession of the suit property and was residing in it. It was further contended that the defendant no.1 had received the earnest money from Jinnappa and Vidyadhar and had executed agreement in their favour thereby rescinding the earlier agreement for sale. Even though the plaintiff had subsequently purchased the suit property by registered sale deed he had allowed the defendant no.1 to occupy the suit house.

. Defendant no.1 filed his Written Statement (Exh. 13) and admitted the earlier transaction of agreement for sale and its cancellation on return of the earnest money by Jinnappa and Vidyadhar. The defendant no.1 further submitted that the sale transaction by registered sale deed dated 26/4/1988 was genuine but he had paid the entire consideration amount and the sale deed was singed in favour of the plaintiff at his instance as the plaintiff was the younger brother. He thus claimed that the plaintiff alone was not the owner and he could not acquire any right from the agreement or sale deed dated 26/4/1988. He also claimed that the suit filed was beyond limitation i.e. Regular Civil Suit No.160 of 1995. Plaintiff examined two witnesses i.e. himself

and Vidyadhar Bhoje PW 2) whereas the defendant no.1 examined three witnesses but defendant no.2 did not adduce any evidence. It was the case of the defendant no.2 that she was in occupation of the suit property since 1982.

. Once the sale transaction in terms of the sale deed dated 26/4/1988 was admitted by the defendant no.1 in favour of the plaintiff, it was necessary for the defendant no.1 to prove that he had financed the entire consideration amount and he was the real purchaser of the suit premises. The trial Court, therefore, rightly framed two issues casting burden on defendant no.1 to prove them viz.

(1) Whether defendant no.1 proved that he himself and plaintiff were the joint owners of the suit property?

(2) Whether he proved that the suit property was not properly valued?

. On assessing the evidence of all the three witnesses examined by the defendant, the trial Court held that the defendant no.1 failed to prove that he

himself and plaintiff are the joint owners of the suit property. In addition the defendant no.1 could not prove that the value of the suit property was Rs.50,000/- at the relevant time and the suit property was undervalued. The joint ownership could not be proved by the defendant no.1, obviously on the basis of the sale deed (Exh.89/4).

. The lower Appellate Court again re-appreciated the evidence of DW 1 Appa Mulla and DW 2 Mansur Mulla. Appa Mulla in his depositions had stated before the trial Court that the suit property was purchased in the joint name because Tikamdas Talreja had filed civil suit against both of them. This contention was rejected on the ground that in the civil litigation pending between the defendant no.1 and Talreja the plaintiff was a party and, therefore, purchasing the suit property in the name of the plaintiff could serve no purpose in the said litigation against Talreja. From his cross-examination it revealed that plaintiff had come to Ichalkaranji in the year 1978 and was running a tailoring shop in the premises of Shri Bagwan and this clearly indicated that the plaintiff had his own source of income. DW 2 Mansur Mulla admitted that he

was not present when the sale deed of 1988 was signed. So far as the possession of defendant no.2 is concerned, the lower appellate Court has considered the report of the Court Commissioner i.e. Exh. 38 in which it was stated that the defendant no.1 was in possession of the suit property and this evidence of the Court Commissioner went unchallenged.

. Thus there is no substantial question of law that arises for consideration in the Second Appeal and the same must fail at the threshold.

. The appeal is dismissed in limine.

. Civil application stands rejected.

(B.H.MARL